1 2 3 4	PAUL J. ANDRE (State Bar No. 196585) pandre@kramerlevin.com LISA KOBIALKA (State Bar No. 191404) lkobialka@kramerlevin.com JAMES HANNAH (State Bar No. 237978) jhannah@kramerlevin.com KRAMER LEVIN NAFTALIS & FRANKEL LLP	DUANE MORRIS LLP Patrick S. Salceda (CA SBN 247978) psalceda@duanemorris.com One Market Plaza Spear Tower, Suite 2200 San Francisco, CA 94105 Telephone: 415.957.3000 Facsimile: 650.618.2713
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10		
11	IN THE UNITED S	STATES DISTRICT COURT
12	FOR THE NORTHER	RN DISTRICT OF CALIFORNIA
13	SAN J	JOSE DIVISION
14	FINJAN, INC., a Delaware Corporation,	Case No.: 5:17-cv-00072-BLF-SVK
15	Plaintiff,	JOINT CLAIM CONSTRUCTION AND
		PRE-HEARING STATEMENT
16	V.	
17	CISCO SYSTEMS, INC.,	PURSUANT TO DKT. NO. 70
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17 18 19	CISCO SYSTEMS, INC.,	
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Pursuant to the Joint Stipulated Case Schedule As Modified By The Court (Dkt. No. 70) and Patent L.R. 4-3, Plaintiff Finjan, Inc. ("Finjan") and Defendant Cisco Systems, Inc. ("Cisco" or "Defendant") hereby submit this Joint Claim Construction and Pre-Hearing Statement.

I. PATENT L.R. 4-3(a): PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties' agreed upon claim constructions are provided below.

U.S. Patent No. 6,154,844			
Claim Term	Claim(s)	Agreed Construction	
Downloadable	1, 15, 43	an executable application program, which is downloaded from a source computer and run on the destination computer.	

U.S. Patent No. 8,677,494			
Claim Term Claim(s) Agreed Construction		Agreed Construction	
Downloadable	10	an executable application program, which is downloaded from a source computer and run on the destination computer	
database	10	a collection of interrelated data organized according to a database schema to serve one or more applications	

U.S. Patent No. 6,804,780			
Claim Term	Claim(s)	Agreed Construction	
"Downloadable"	1, 9, 17, 18	an executable application program, which is downloaded from a source computer and run on the destination computer.	

II. PATENT L.R. 4-3(b): PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties' proposed additional claim constructions are provided below. All supporting evidence for the parties' claim constructions is provided in Exhibit A. The parties reserve their rights to cite additional supporting evidence based on arguments raised in the claim construction briefs.

U.S. Patent No. 6,154,844					
Claim Term Claim(s)		Finjan's Proposed	Defendants' Proposed		
		Construction	Construction		
inspector	1, 15, 43	No construction necessary – Plain and ordinary meaning.	external server that is not a network gateway for performing content inspection		

Cl	aim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
				of a Downloadable
we	eb server	1, 15, 43	No construction necessary – Plain and ordinary meaning.	web server that is not a netwo gateway
sec tha sus [th	ownloadable curity profile at identifies spicious code in ae/a] [received] ownloadable	1, 15, 43	No construction necessary – Plain and ordinary meaning.	a profile that includes a list code within [the/a] [receive Downloadable for performing undesirable, hostile, potentially hostile suspicio operations
ser Do ava	fore a web ever makes the ownloadable ailable to web ents	1, 15, 43	No construction necessary – Plain and ordinary meaning. Plain and ordinary meaning of "web client" is "an application on the computer of an end user that requests a Downloadable from the web server."	before any web server mak the Downloadable available any web client
engthe ger Do sec that sus a I and first sec the ber ser Do available.	ntent inspection gine for using e first rule set to nerate a first ownloadable curity profile at identifies spicious code in Downloadable, d for linking the st Downloadable curity profile to e Downloadable fore a web ever makes the ownloadable ailable to web ents	15	No construction necessary – Plain and ordinary meaning.	software running on an extern server that is not a network gateway for performing conte inspection of a Downloadal that performs the function recited in the claim *Subject to the construction for terms within the recit functions
rec	eans for ceiving a ownloadable	43	Governed by 35 U.S.C. § 112(6): Function: receiving a Downloadable	Governed by 35 U.S.C. § 112(c) Function: receiving a Downloadable

ļ	U.S. Patent No. 6,1: Claim Term	Claim(s)	Finjan's Proposed	Defendants' Proposed
		0 (0)	Construction	Construction
			Structure: Downloadable file interceptor	inspector 125 that is external to a network gateway
	means for	43	Governed by 35 U.S.C. § 112(6):	Governed by 35 U.S.C. § 112(6):
	generating a first Downloadable		112(0).	Function:
	security profile that identifies		Function: generating a first Downloadable security profile that identifies suspicious code	"generating a first [Downloadable security profile that identifies suspicious code
	suspicious code in the received		in the received Downloadable	in the received Downloadable]
	Downloadable		Structure: content inspection engine programmed to perform	Structure: Content inspection engine 160 of inspector 125 programmed to
			the algorithm disclosed at Col. 8, lines 51-60 of the '844	perform the algorithm disclosed at 8:49-60 of the '844 patent
			Patent	and 5:36-47, 5:54-57, 8:23-24, 9:20-42, and Fig. 7 of U.S. Patent No. 6,092,194
	means for linking	43	Governed by 35 U.S.C. § 112(6):	Governed by 35 U.S.C. § 112(6):
	the first Downloadable security profile to		Function: linking the first	Function: "linking the first Downloadable security profile to the
	the Downloadable before a web		Downloadable security profile to the Downloadable before a	security profile to the Downloadable [before a web server makes the Downloadable
	server makes the Downloadable		web server makes the Downloadable available to web	available to web clients]"
	available to web		clients	Structure: Content inspection engine 160
	clients		Structure: content inspection engine programmed to perform	of inspector 125 programmed to perform step 630 of FIG. 6,
			the algorithm of step 630 disclosed at Fig. 6; col. 8, lines 65-67; and col. 6, lines 13-24	disclosed at 8:65-67 and col. 6, lines 13-20. Specifically,
			03-07, and cor. 0, mies 13-24	attaching a Downloadable security profile to the Downloadable (col. 8, lines 65-
				67 and col. 6, lines 13-18) or attaching to the Downloadable
				a pointer that points to a stored Downloadable security profile
L		1	No constantion are	(col. 6, lines 18-20). Order of steps is performed as
	receiving; generating; and linking"	1	No construction necessary – Plain and ordinary meaning.	recited in the claim.

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U.S. Patent No. 8,677,494				
Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction	
Downloadable scanner	10	No construction necessary – Plain and ordinary meaning.	software for disassembling machine code of a Downloadable and resolving commands to identify suspicious operations in the Downloadable	

	U.S. Patent No. 6,804,780			
Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction	
"obtaining; fetching; and performing"	1	No construction necessary – Plain and ordinary meaning.	Order of steps is performed as recited in the claim.	
"software component[s]"	1, 9, 17, 18	No construction necessary – Plain and ordinary meaning.	code module required to be included within a Downloadable for execution as part of the Downloadable	
"performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID"	1, 9, 17, 18	performing a hashing function on the Downloadable together with its fetched software components to generate a Downloadable ID	performing a hashing function on the Downloadable together with its fetched software components to generate a unique and reproducible number or string that is the same whether the software components are referenced by the Downloadable and or are included with the Downloadable	
"means for fetching at least one software component identified by the one or more references"	17	Governed by 35 U.S.C. § 112(6): Function: fetching at least one software component identified by the one or more references Structure: ID generator programmed to perform the algorithm of step 820 disclosed at Fig. 8; col. 9, lines 62-63; and col. 4, lines 56-66.	Governed by 35 U.S.C. § 112(6): Function: "fetching at least one software component identified by the one or more references" Structure: Indefinite	
"means for performing a	17	Governed by 35 U.S.C. § 112(6):	Governed by 35 U.S.C. § 112(6):	

	U.S. Patent No. 6,80					
	Claim Term	Claim(s)	Finjan's Proposed	Defendants' Proposed		
2			Construction	Construction		
	hashing function			Function :		
	on the		Function: performing a	"performing a hashing function		
.	Downloadable and		hashing function on the	on the Downloadable and the		
	the fetched		Downloadable and the	fetched software components to		
	software		fetched software	generate a Downloadable ID"		
	components to		components to generate a Downloadable ID			
	generate a		Downloadable 1D	*This function is subject to the		
	Downloadable ID"		Structure: ID generator	construction identified elsewhere		
			programmed to perform the	herein		
			algorithm of step 840	g, ,		
			disclosed at Fig. 8; col. 9,	Structure:		
			lines 65-67.	ID generator 315 programmed to		
				perform algorithm of steps 830		
	"means for	17	Governed by 35 U.S.C. §	and 840 described at 9:62-67. Governed by 35 U.S.C. § 112(6):		
	obtaining a	1 /	112(6):	Governed by 33 U.S.C. § 112(0):		
	Downloadable that		112(0).	Function:		
	includes		Function: obtaining a	obtaining a Downloadable that		
	one or more		Downloadable that includes	includes one or more references		
	references to		one or more references to	to software components		
	software		software components	required to be executed by the		
	components		required to be executed by	Downloadable		
	required		the Downloadable	2 6 11 11 12 13 13 13 13 13 13 13 13 13 13 13 13 13		
	to be executed by			Structure:		
	the		Structure: ID generator	Indefinite		
	Downloadable"		programmed to perform the			
			algorithm of step 810			
			disclosed at Fig. 8; col. 4, lines 50-54; col. 9, lines 58-			
			61			
	"communications	9		Governed by 35 U.S.C. § 112(6):		
	engine for		No construction necessary	35 c.b.c. § 112(0).		
	obtaining a		– Plain and ordinary	Function:		
	Downloadable that		meaning.	obtaining a Downloadable that		
	includes one or			includes one or more references		
	more			to software components required		
	references to			to be executed by the		
	software			Downloadable		
	components					
	required to be			Structure:		
	executed by the					
	Downloadable"			Indefinite		
	"ID generator	9	No construction necessary	Governed by 35 U.S.C. § 112(6):		
Ш	coupled to the	1	 Plain and ordinary 			

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U.S. Patent No. 6,804,780				
Claim Term	Claim(s)	Finjan's Proposed	Defendants' Proposed	
		Construction	Construction	
communications		meaning.	Function:	
engine that			fetching at least one software	
fetches at least one			component identified by the one	
software			or more references	
component				
identified by the			Structure:	
one or more			Indefinite	
references"				

U.S. Patent No. 8,141,154				
Claim Term Claim(s)		Finjan's Proposed	Defendants' Proposed	
		Construction	Construction	
"a call to a first	1	No construction necessary	a statement or instruction in a	
function"		 Plain and ordinary 	program requesting the services	
		meaning.	of a particular (i.e., first) function	
"a first function"	1	No construction necessary	substitute function	
		 Plain and ordinary 		
		meaning.		
"a second	1	No construction necessary	original function, which is	
function"		 Plain and ordinary 	different than the first function	
		meaning.		

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U.S. Patent No. 7,647,633				
Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction	
"mobile protection code"	1, 8, 13, 14	code that, at runtime, monitors or intercepts actually or potentially malicious code operations without modifying the code operations	mobile executable code that, at runtime, monitors for and intercepts actually or potentially malicious code operations	
"information- destination of the downloadable- information"	1, 8, 13	No construction necessary – Plain and ordinary meaning. The plain and ordinary meaning of the terms	client(s) that originally requested, and is the final destination for, the downloadable-information	
"downloadable- information destination"	14	"information-destination" and "downloadable-information destination" is a device or process that is capable of receiving and initiating or otherwise hosting a mobile code execution.		

U.S. Patent No. 7,6 Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
"determining	1, 8, 13	No construction necessary –	distinguishing between two
whether the		Plain and ordinary meaning.	alternative possibilities:
downloadable-		Train and oraniary mouning.	executable code is included in t
information			downloadable-information, and
includes			executable code is not included
executable code"			the downloadable-information
"information re-	2, 3, 9, 10	No construction necessary –	server
communicator"	2, 3, 7, 10	Plain and ordinary meaning.	Server
Communicator		Train and Ordinary meaning.	
"means for	13	Governed by 35 U.S.C. §	Governed by 35 U.S.C. § 112(6):
receiving		112(6):	3 112(0)
downloadable-		(-/-	Function:
information"		Function: receiving	receiving downloadable-
		downloadable-information	information
		Structure: re-	Structure:
		communicating device	server
"means for	13	Governed by 35 U.S.C. §	Governed by 35 U.S.C. § 112(6)
determining		112(6):	•
whether the			Function:
downloadable-		Function: determining	determining whether the
information		whether the downloadable-	downloadable-information
includes		information includes	includes executable code
executable code"		executable code	
			Structure:
		Structure: code detection	sever with content inspection
		engine to perform the	engine for performing algorithm
		algorithm of col. 2 at 63-66,	of FIG. 10a described at 19:18-
		col. 14, line 58 to col. 15,	
		line 8 or col. 16, lines 16-27.	
"means for	13	Governed by 35 U.S.C. §	Governed by 35 U.S.C. § 112(6)
causing mobile		112(6):	25.5112(0)
protection code to			Function:
be communicated		Function: if the	causing mobile protection code
to at least one		downloadable-information is	be communicated to at least one
information-		determined to include	information-destination of the
destination of the		executable code, causing	downloadable-information, if the
downloadable-		mobile protection code to be	downloadable-information is
information, if the		communicated to at least one	determined to include executab
downloadable-		information-destination of	code
information is		the downloadable-	
determined to		information without	Structure:
	1	modifying the executable	

U.S. Patent No. 7,6 Claim Term	Claim(s)	Finjan's Proposed	Defendants' Proposed
		Construction	Construction
executable code"		code	of FIG. 4 performing the
			algorithm described at 12:38-
		Structure: transfer engine	12:64 and 13:19-13:41
		programmed to perform the	
		algorithm of col. 14, lines 24-36.	
"A computer	14	"A computer program	Indefinite under <i>IPXL</i> (mixed
program product,	14	product, comprising a	statutory classes) and <i>Nautilus</i>
comprising a		computer usable	statutory classes) and realities
computer usable		medium having a computer	
medium having a		readable program code	
computer readable		therein,	
program code		the computer readable	
therein,		program code adapted to be	
the computer		executed for computer	
readable program		security, comprising:"	
code adapted to be			
executed for			
computer security,			
the method			
comprising:"	1.4	66 A	In definite and an Markin
"A computer	14	"A computer program	Indefinite under <i>Nautilus</i> standard
program product, comprising a		product, comprising a computer usable	standard
computer usable		medium having a computer	
medium having a		readable program code	
computer readable		therein,	
program code		the computer readable	
therein, the		program code adapted to be	
computer readable		executed for computer	
program code		security, comprising:	
adapted to be		providing a system;	
executed for		receiving; and causing	
computer security,		"	
the method			
comprising:			
providing a			
system;			
receiving; and			
causing" "causing mobile	14	No construction necessary	neelegging mobile protection and
protection code to	14	No construction necessary – Plain and ordinary meaning.	packaging mobile protection code with the downloadable-
be executed by the		Train and ordinary meaning.	information such that upon
mobile code			receipt of the package the mobile
executor at a			protection code is initiated by th

U.S. Patent No. 7,647,633			
Claim Term	Claim(s) Finjan's Proposed Defendants' Proposed		Defendants' Proposed
		Construction	Construction
downloadable-			mobile code executor at the
information			downloadable-information
destination"			destination before initiating the
			downloadable-information

III. PATENT L.R. 4-3(c): IDENTIFICATION OF 10 TERMS WHOSE CONSTRUCTION WILL BE MOST SIGNIFICANT TO RESOLUTION OF THE CASE.

The parties hereby identify in the table below five (5) terms each for a total of ten (10) terms per Patent L.R. 4-3(c):

No.	Patent_[Claim]	<u>Term</u>	Identifying Party
1	'844 patent [43]	means for receiving a Downloadable	Finjan
2	'844 patent [43]	means for generating a first Downloadable security profile that identifies suspicious code in the received Downloadable	Finjan
3	'844 patent [43]	means for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients	Finjan
4	'844 patent: [1, 15, 43]	before a web server makes the Downloadable available to web clients	Cisco
5	'633 patent: [13]	means for determining whether the downloadable-information includes executable code	Finjan
6	'633 patent: [13]	means for causing mobile protection code to be communicated to at least one information- destination of the downloadable-information, if the downloadable- information is determined to include executable code	Finjan
7	'633 patent: [1, 8, 13/14]	information-destination of the downloadable-information"/"downloadable-information destination	Cisco
8	'494 patent: [10]	Downloadable scanner	Cisco
9	'780 patent [1, 9, 17, 18]	performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID	Cisco
10	'154 patent: [1]	a first function/a second function	Cisco

Finjan's Statement: Finjan does not consider any of the disputed terms significant or case or claim dispositive.

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Cisco's Statement:

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Cisco believes each of the ten (10) terms listed above is claim dispositive individually and case dispositive in the aggregate.

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Cisco's Additional Statement:

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believes that there is a fundamental dispute that must be resolved by the Court under O2 Micro Int'l v.

Beyond Innovation Tech. Co., regarding the additional terms listed in Exhibit A that are not in the list of ten (10) terms identified above. Of these terms, Cisco believes that the sub-set of terms listed below are most important, as their constructions are claim dispositive. Cisco will seek leave of Court to brief

more than the ten (10) terms identified jointly by the parties.

A. '844 patent

- 1. "inspector" (claims 1, 15, 43)
- "Downloadable security profile that identifies suspicious code in [the/a] [received] 2. Downloadable" (claims 1, 15, 43)

In addition to the ten (10) terms identified above by the parties under Patent L.R. 4-3(c), Cisco

3. "content inspection engine for using the first rule set to generate a first Downloadable security profile that identifies suspicious code in a Downloadable, and for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients" (claim 15)

В. **'780 patent**

- 4. "software components" (claims 1, 9, 17 and 18)
- 5. "means for performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID" (claim 17)

C. '154 patent

"a call to a first function" (claim 1) 6.

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D. '633 patent

- 7. "mobile protection code" (claims 1, 8, 13, 14)
- 8. "determining ... whether the downloadable-information includes executable code" (claim 1, 8, 13)
 - 9. Indefiniteness (claim 14):
 - "A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising:"
 - b. "A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising: providing a system...; receiving ...; and causing ..."
- 10. "causing mobile protection code to be executed by the mobile code executor at a downloadable-information destination" (claim 14)

IV. PATENT L.R. 4-3(d): TIME FOR CLAIM CONSTRUCTION HEARING.

The parties anticipate that they will not require more than three (3) hours for the entire claim construction hearing.

PATENT L.R. 4-3(e): WITNESSES AT CLAIM CONSTRUCTION HEARING. V.

<u>Finjan's Statement:</u>

Finjan intends to offer a declaration and may present live witness testimony from Dr. Nenad Medvidovic, University of Southern California, 941 Bloom Walk, Los Angeles, CA 90089, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how the above terms are understood by one of skill in the art, and to support Finjan's claim construction positions. Furthermore, Dr. Nenad Medvidovic will and rebut any testimony or opinions offered by Defendant's expert witness.

Defendant's Statement:

Cisco intends to offer a declaration and may present live witness testimony from Dr. Paul Clark, Secure Methods, Inc., 4705 Broad Brook Drive, Bethesda, Maryland 20814, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how the above terms are understood by one of skill in

1	the art, and to support Cisco's claim construction positions. Furthermore, Dr. Paul Clark will rebut any			
2	testimony or opinions offered by Finjan's expert witness.			
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4		Respectfully submitted,		
5	Dated: November 20, 2017 B	y:/s/Lisa Kobialka		
6		Paul J. Andre (State Bar No. 196585) Lisa Kobialka (State Bar No. 191404)		
		James Hannah (State Bar No. 237978)		
7		KRAMER LEVIN NAFTALIS & FRANKEL LLP		
8		990 Marsh Road		
9		Menlo Park, CA 94025		
		Telephone: (650) 752-1700		
10		Facsimile: (650) 752-1800		
11		pandre@kramerlevin.com		
		<u>lkobialka@kramerlevin.com</u> jhannah@kramerlevin.com		
12		<u>jnannan@kramenevin.com</u>		
13		Attorneys for Plaintiff		
13		FINJAN, INC.		
14				
15		Respectfully submitted,		
16	Dated: November 20, 2017 B	y:/s/Jarrad M. Gunther		
		Patrick S. Salceda		
17		Email: psalceda@duanemorris.com Duane Morris LLP		
18		One Market Plaza		
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19		San Francisco, CA 94105		
20		Telephone: 415.957.3000 Facsimile: 650.618.2713		
21				
22		L. Norwood Jameson (admitted <i>pro hac vice</i>) Email: wjameson@duanemorris.com		
22		Matthew C. Gaudet (admitted <i>pro hac vice</i>)		
23		Email: mcgaudet@duanemorris.com		
2.4		David C. Dotson (admitted <i>pro hac vice</i>) Email: dcdotson@duanemorris.com		
24		Jennifer H. Forte (admitted <i>pro hac vice</i>)		
25		Email: jhforte@duanemorris.com		
		Duane Morris LLP		
26		1075 Peachtree Street, Ste. 2000		
27		Atlanta, GA 30309		
۷ /		Telephone: 404.253.6901		
28		Facsimile: 404.253.6901		
	IOINT CLAIM CONSTRUCTION	CASE NO. 5:17 av 00072 DI E SW		

JOINT CLAIM CONSTRUCTION AND PRE-HEARING STATEMENT

Case 5:17-cv-00072-BLF Document 85 Filed 11/20/17 Page 14 of 14 Joseph A. Powers (admitted *pro hac vice*) Email: japowers@duanemorris.com Jarrad M. Gunther (admitted *pro hac vice*) Email: jmgunther@duanemorris.com **Duane Morris LLP** 30 South 17th Street Philadelphia, PA 19103 Telephone: 215.979.1000 Facsimile: 215.979.1020 Counsel for Defendant Cisco Systems, Inc. **ATTESTATION** In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document. /s/ Lisa Kobialka Lisa Kobialka JOINT CLAIM CONSTRUCTION CASE NO. 5:17-cv-00072-BLF-SVK

AND PRE-HEARING STATEMENT